

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 04-10816-MLW

ABC MORTGAGE CORPORATION
f/k/a JOHN G. MACLEOD d/b/a ABC
MORTGAGE COMPANY,

Plaintiff,

v.

SCOTTSDALE INSURANCE, CO.

Defendant.

AFFIDAVIT OF JOHN MACLEOD, JR.

I, John MacLeod, hereby state under oath and based on my own personal knowledge that:

1. My name is John G. MacLeod, Jr.
2. I am President of ABC Mortgage Corporation.
3. From 1998 through December, 2002, I operated my mortgage business as John MacLeod d/b/a ABC Mortgage Company.
4. In December, 2002, ABC Mortgage Corporation was incorporated in the Commonwealth of Massachusetts.
5. I learned of marketing by facsimile when I received an informational fax from Fax.com, which had the endorsement of one of our clients.
6. I contracted with Fax.com, and later Eloansites.com, to conduct marketing on our behalf via facsimile.
7. Fax.com and Eloansites.com conducted fax marketing on behalf of ABC Mortgage through computers set up in our basement.

8. Fax.com and Eloansites.com were responsible for the daily operation of the fax marketing.
9. Fax.com and Eloansites.com controlled the computers remotely and determined to whom the faxes would be sent.
10. ABC Mortgage did not send the faxes or have control over the machines and to whom they would send faxes.
11. I was unaware of the TCPA when I contracted with Fax.com and Eloansites.com.
12. Fax.com and Eloansites.com did not disclose that the TCPA imposed restrictions on marketing via facsimile.
13. I became aware of the TCPA at or about the time I received a letter from Thomas Mulhern, the plaintiff in the underlying class action, alleging that the faxes he had received violated the TCPA.
14. I inquired of Fax.com and Eloansites.com about the TCPA and the legality of the faxing, and I was assured that it was in compliance with all regulations and legal.
15. I was not aware that their conduct or mine in contracting with them might be construed as a violation of the TCPA.

Signed under the pains and penalties of perjury this ____ day of March, 2006.


John G. MacLeod, Jr.